IN THE HIGH COURT OF KERALA AT ERNAKULAM

Present:

THE HONOURABLE THE CHIEF JUSTICE MR. H.L.DATTU

and

THE HONOURABLE MR. JUSTICE K.T. SANKARAN

WEDNESDAY, THE 19TH SEPTEMBER, 2007/28TH BHADRA 1929

W.A. No. 2287 of 2007

(Against the Order dated 09/08/2007 in I.A. No.7751 of 2007 in W.P.(C) No.29316 of 2006)

Appellant/Respondent in IA:

Bank of India,
represented by its Zonal Manager,
Zonal Office, Kaloor-Kadavanthara Road,
Kaloor - 682 017.

By Adv. Sri. Devan Ramachandran.

Respondents/Petitioner in IA:

1. Shri. T. Thulaseedharan Nair,
T.C. 22/819,
Suresh Bhavan,
Kizhe Perumpally Veedu,
Attukal, Manacaud,
Trivandrum.

2. Central Government Industrial Tribunal-cum-Labour Court,
38/377, A-3, Karithala Lane,
Karshaka Road, Ernakulam,
Kochi - 682 016.

R1 by Adv. Sri. A. Jayashankar.
R2 by Asst. Solicitor General Sri. P.Parameswaran Nair.

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 19.9.2007 THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

H.L.DATTU, C.J. & K.T.SANKARAN, J.

W.A. No.2287 of 2007

Dated this the 19th day of September, 2007.

J U D G M E N T

H.L.Dattu, C.J.

The orders passed by the learned Single Judge on I.A.No.7751 of 2007 dated 9th of August, 2007 in W.P.(C) No.29316 of 2006 is the subject matter of this writ appeal.

2. The appellant is the Bank of India. The contesting respondent is the workman.

3. The workman had approached the Industrial Tribunal-cum-Labour Court, Ernakulam, being aggrieved by the orders passed by the appellant Bank in retiring him from service, in I.D.No.7 of 2005. The Industrial Tribunal-cum-Labour Court by its order dated 28th August, 2006 has allowed the dispute and further has directed the appellant Bank to re-instate the workman into service with other consequential monetary and service benefits. The orders passed by the Industrial Tribunal-cum-Labour Court reads as under:

> "In the result, an award is passed finding that the action of management cannot be justified, that the domestic enquiry is vitiated, that the findings of enquiry officer and disciplinary authority are unsustainable and consequently the punishment also cannot stand. The workman is entitled to be reinstated with full back wages, continuity of service and all other consequential benefits. However the parties will suffer their respective cost. The award will take effect one month after its publication in the official Gazette."

4. Aggrieved by the award so passed by the Industrial Tribunal-cum- Labour Court, the Bank is before this Court in W.P.(C) No.29316 of 2006. The Bank has requested this Court to grant interim stay of the award passed by the Industrial Tribunal-cum-Labour Court.

5. The learned Single Judge, while entertaining the writ petition has granted an interim order, staying the award passed by the Industrial Tribunal-cum-Labour Court.

6. After service of notice of the writ petition and the interim order, the workman has filed I.A.No.7751 of 2007. In that application, the workman has requested this Court to direct the appellant Bank to pay a sum of Rs.7,300/- per month from the date of filing of the writ petition as envisaged under Section 17B of the Industrial Disputes Act (Act for short).

7. The prayer made in the said application came to be opposed by the learned counsel appearing for the appellant Bank.

8. The learned Single Judge, by his well-considered order, has allowed the application by rejecting all the contentions canvassed by the learned counsel appearing for the Bank, by order dated 9th August, 2007. The correctness or otherwise of the said order passed by the learned Single Judge is the subject matter of this appeal.

9. Sri.Devan Ramachandran, learned counsel appearing for the appellant Bank would submit that, it is not in all cases that this Court would be directing the Bank to pay 17B wages though there is an interim order

staying the award passed by the Industrial Tribunal. Apart from that, the learned counsel would submit that the learned Single Judge was not justified in directing the Bank to pay a sum of Rs.7,300/- per month, which was the last drawn salary of the workman and according to the learned counsel what requires to be paid by the appellant Bank to the workman is only Rs.4,850.54 per month.

10. The object and purpose of payment of 17B wages to the workman during the pendency of the petition is explained by the Courts. During the pendency of petition if the Court has granted interim order of stay of implementation of the order passed by the Labour Court, the workman has to live and resist the litigation filed by the employer. Therefore, when there is an order of stay passed by the Court staying the implementation of the award passed by the Labour Court, the employer is required to pay under the Act, 17B wages. Therefore, the contention canvassed by the learned counsel appearing for the appellant Bank that when there is an order by this Court staying the implementation of the award passed by the Labour Court, the workman is not entitled for the benefit of 17B wages, cannot be accepted in view of the said legal position of law on this issue. Accordingly, the said contention is rejected. So far as the direction issued by the learned Single Judge for payment of last drawn wages of the workman is concerned, in our opinion, it is justified for the reason that during the pendency of the petition there is severance of employer and employee relationship and during that

period employer cannot be making any statutory deductions. Therefore, the employer is expected to pay "full wages last drawn" by the workman to sustain himself to resist the litigation carried to the High Court by the Management. In that view of the matter, even the second contention canvassed by the appellant Bank has no merit, whatsoever.

11. In our opinion, the decisions relied on by the learned counsel for the appellant would not assist him in any manner whatsoever. Accordingly, the appeal requires to be rejected and it is rejected, without reference to the respondents.

12. In view of the order passed in the writ appeal, the prayer in I.A.No.766 of 2007 is rejected.

Ordered accordingly.

(H.L.DATTU)
CHIEF JUSTICE

(K.T.SANKARAN)
JUDGE

MS